

ORIGINAL



0000121922

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE, CHAIRMAN
BRENDA BURNS
SANDRA KENNEDY
PAUL NEWMAN
BOB STUMP

RECEIVED
2011 JAN 11 P 3:30

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE COMPLAINT
OF THE BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND
HUALAPAI INDIAN RESERVATIONS

DOCKET NO. E-01750A-05-0579

BUREAU OF INDIAN AFFAIRS
RESPONSE TO APPLICATION FOR
REHEARING

Complainant Bureau of Indian Affairs ("BIA") responds to Mohave Electric Cooperative, Inc.'s ("Mohave") application for a rehearing of Decision No. 72043. Mohave violated numerous Arizona laws and regulations governing electric utilities. Without prior Arizona Corporation Commission ("ACC") approval, a licensed electric utility is prohibited from abandoning its customers and from disposing assets used to serve its customers. Mohave did just that, however. Without required ACC authorization, Mohave (1) discontinued electrical service to its customers, including the BIA, the Hualapai Tribe, a telephone company, a ranch, and two residences; and (2) unilaterally abandoned an electric line that served those customers. The ACC correctly found that Mohave must resume service to its abandoned customers and that Mohave owns the line. Every contention raised by Mohave lacks merit, and its application for rehearing accordingly should be denied.

I. SUMMARY OF FACTS

A. Mohave: A Rural Electric Cooperative whose Certificated Area Includes Parts of the Hualapai Reservation. Mohave has Served the Reservation for Decades

Mohave is a rural electric co-operative that serves sparsely populated, rural areas with customers who are located far away from one another. Tom Longtin Hearing

Arizona Corporation Commission

DOCKETED

JAN 11 2011

DOCKETED BY

1 Testimony ("HT"), p. 271, Ins. 1-14. Mohave's purpose, as a rural co-op, is to serve rural
2 areas. Id. at p. 290, Ins. 22-24. Mohave's certificated area includes Peach Springs,
3 which is on the Hualapai reservation, and other parts of the Hualapai reservation. Id. at
4 p. 280, Ins. 4-9, p. 369, Ins. 20-24. Mohave has served portions of the Hualapai
5 reservation for more than 40 years. Id. at p. 280, Ins. 19-24.

6 **B. Havasupai Village**

7 Most Havasupai members live in Havasupai Village. Phil Entz Pre-Filed
8 Testimony ("PF"), p. 2, Ins. 14-15. Havasupai Village is isolated. It is located at the
9 bottom of the Grand Canyon. Stipulated Facts, ¶ 3. There are no roads connecting
10 Havasupai Village with other parts of Arizona. Stipulated Facts, ¶ 5. The only practical
11 ways out of the Village are by helicopter or by traversing a winding, dirt trail on foot or
12 on horseback up the wall of the canyon. Walker PF, p. 2, Ins. 24-26.

13 **1. Generators supply electricity to Havasupai Village**

14 By 1965, the BIA provided electricity to its government facilities in Havasupai
15 Village using gas-powered generators. Stipulated Facts, ¶ 3. By 1971, the BIA
16 supplied electricity to the Village using diesel-powered generators. Id.

17 **2. The Havasupai Tribe seeks a reliable source of electricity**

18 By 1975, the Havasupai Tribe had become increasingly dependent on electricity.
19 Stipulated Facts, ¶ 6. The Havasupai Tribe hoped to obtain a more reliable source of
20 electricity. To that end, in January, 1975, the Havasupai Tribal Chairman wrote Mohave
21 and asked that Mohave "provide us with the commercial power that will assure reliable,
22 dependable and consistent use of all the facilities in our community." Id. In March
23 1975, the Hualapai Tribe passed a similar resolution, resolution no 4-75, requesting
24 electrical service from Mohave. Stipulated Facts, ¶ 7.

25 Because the Havasupai and Hualapai Tribes wanted and needed reliable
26 electricity, the BIA began to assist them. From about 1968 to 1981, the BIA evaluated
27 alternatives for securing electricity to the Hualapai and Havasupai reservations.
28

1 Stipulated Facts, ¶ 9. The BIA considered expanding its generators or having a 70-mile
2 electric line built. Id. The BIA chose the 70-mile line. Id.

3 There are now about 200 homes in the Village that use electricity. See Walker
4 HT, p. 153, Ins. 4-5. Temperatures in Havasupai Village often exceed 100° in the
5 summer, so air conditioning by the Supai members probably consumes a lot of the
6 electricity in the Village. James Williams PF, p. 4, Ins. 25-28. While the BIA charges
7 the Supai members for their electricity, the BIA does not turn a profit or even break
8 even. Id. at p. 5, Ins. 4-12. Except for some emergency generators, the people living
9 in the Village have no other source of electrical power other than the electricity supplied
10 by the 70 mile line that is the subject of this dispute. Walker PF, p. 3, Ins. 17-19.

11 **C. The Contract: Mohave Builds and Owns the Line and the BIA's Point**
12 **of Delivery is a Primary Meter at Long Mesa**

13 On October 1, 1981, Mohave and the BIA entered into a contract (the "Contract")
14 in which Mohave would construct an approximately 70-mile power line (the "Line") from
15 its existing Nelson Substation to Long Mesa and would supply up to 1,500 KW of
16 electricity for operations on the Hualapai and Havasupai reservations. Stipulated Facts,
17 ¶ 13. Under the Contract, "All facilities to be provided by or on behalf of Mohave shall
18 be and remain its sole property." Leonard Gold PF Direct, p. 9 and exh. 8; Stipulated
19 Facts, ¶ 13. Mohave, therefore, owned the Line.

20 As required by the Contract, the Line runs from Mohave's Nelson Substation to
21 Long Mesa, where there is a primary meter for the BIA. Gold HT, p. 71, Ins. 11-12.
22 There is no substation at Long Mesa. Id. From Long Mesa, which is located at the edge
23 of the Grand Canyon, the electricity would be sent down to the government facilities and
24 people living in Havasupai Village. Walker PF, p. 2, Ins. 17-20.
25
26
27
28

1 **D. Mohave Begins Providing Electric Service to New Customers along**
2 **the Line**

3 After constructing the Line, Mohave began servicing customers along its length.
4 As of July, 2003, Mohave provided electricity to twelve accounts along the Line.
5 Stipulated Facts, ¶ 34.

6 In addition to the BIA's meter at Long Mesa, the BIA has two other accounts on
7 the Line, one for a fire observation tower on the Hualapai reservation and another for a
8 radio repeater tower on the Havasupai reservation. Gold PF Dt., p. 19, Ins. 13-16.
9 Mohave billed the BIA separately for each BIA account (Long Mesa, fire observation
10 tower, radio repeater). Williams PF, p. 3, Ins. 10-15, p. 5, Ins. 15-26; Longtin HT, p.
11 357, Ins. 10-13.

12 Mohave also connected two customers to the Line who are located in Mohave's
13 certificated area. Those customers were the Hualapai Tribe for its Tank Well pump and
14 the Cesspooch family for their home. See Longtin HT, p. 366, Ins. 12-13; Walker PF, p.
15 8, ln. 24 – p. 9, ln. 1 and exh. 4.

16 **II. DECISION NO. 72043 IS FULLY SUPPORTED BY THE FACTS AND LAW.**
17 **MOHAVE'S APPLICATION FOR REHEARING LACKS MERIT AND SHOULD**
18 **BE DENIED**

19 Mohave raises several contentions, none of which warrant a rehearing.

20 **A. An ACC Decision Need Not Address Every Conceivable Issue**

21 Mohave's first argues that the ACC failed to address every possible issue
22 concerning the Line and that it therefore needs further guidance. Application, pp. 6-7.
23 For instance, Mohave complains that the ACC failed to address what will happen in
24 2012 and 2014 when certain easements for the Line are set to expire. Similarly,
25 Mohave argues the ACC should have decided who will be responsible for any tribal
26 taxes on the Line.

27 The ACC need not micro-manage Mohave. Mohave is a public service
28 corporation and presumably knows how to manage its day-to-day affairs and how to

1 provide electricity to its customers. In fact, Mohave has provided electrical service to
2 the Hualapai reservation for over four decades. Mohave knows how to, for example,
3 renew tribal easements or how to account for tribal taxes. The ACC need not, and
4 should not, get involved in Mohave's day-to-day affairs. These routine matters do not
5 warrant a rehearing.

6 **B. The BIA, and the Customers along the Line, are Mohave's Retail**
7 **Customers**

8 Mohave contends the ACC wrongly decided that the BIA and the customers
9 along the Line are Mohave's retail customers. Application, pp. 7-12. This contention
10 lacks merit and does not warrant a rehearing.

11 A "retail electric customer" is someone "who purchases electricity for that
12 person's own use, including use in that person's trade or business, and not for resale,
13 redistribution or retransmission." A.R.S. § 40-201(21). The BIA and all the customers
14 along the Line were Mohave's retail customers.

15 **1. Customers along the Line are Mohave's retail electric customers**

16 Until 1997, Mohave read the meters of its customers along the Line; billed the
17 customers along the Line retail rates; and responded to their service calls. Longtin HT,
18 p. 295, ln. 15 – p. 296, ln. 8. As of July, 2003, Mohave provided electricity to twelve
19 accounts along the Line. Stipulated Facts, ¶ 34. These customers asked Mohave to
20 provide electricity to them. Gold PF Dt., p. 21, lns. 1-6. Mohave entered into contracts
21 with them to provide them with electricity. Gold HT, p. 109, lns. 16-17. Mohave
22 charged all of them retail electric rates. Gold PF Dt., pp. 21-22. For all of these
23 customers, Mohave installed its meters, read those meters, and billed the customers.
24 Gold PF Dt., p. 21, lns. 1-6.

25 The Cesspooch and Bravo families, the Hualapai Tribe, the BIA (for its fire tower
26 account, its radio repeater account, and its Long Mesa account), the Navajo
27 Nation/Diamond A Ranch, and Arizona Telephone Company/TDS all used the electricity
28

1 they received from Mohave for their own use, including in their trade or business. Gold
2 PF, p. 19, ln. 1 – p. 20, ln. 24. They, therefore, were Mohave's retail customers. A.R.S.
3 § 40-201(21).

4 Similarly, the BIA used its electricity in its trade or business. The BIA has a fire
5 tower and a radio repeater account along the Line. Gold PF Dt., p. 21, Ins. 7-15. For
6 both of these BIA accounts, Mohave charged the BIA rate 504, which is Mohave's retail
7 small commercial rate. Gold PF Dt., p. 21, Ins. 7-15. Here, operating a fire observation
8 tower and a radio repeater tower is done in the BIA's normal course of business of
9 supporting Native Americans. Williams PF, p. 3, ln. 16 – p. 4, ln. 2. Mohave thought
10 these two BIA accounts were its retail customers as evidenced by Mohave's letter to the
11 BIA when it discontinued service. When Mohave abandoned these two BIA accounts,
12 Mohave wrote to the BIA and said: "your retail electric service has been transferred...."
13 Gold PF Dt., p. 21, Ins. 16-22; Williams PF, p. 11, Ins. 20-25, exh. 9 and 10. Therefore,
14 Mohave itself thought the BIA was its retail customer.
15
16

17
18 Moreover, all the customers along the Line, were members of Mohave's co-op.
19 Longtin HT, p. 295, Ins. 3-11. Mohave admitted at the hearing that two customers, Mr.
20 Bravo and the Diamond A Ranch (the Navajo Nation ranch), were Mohave's retail
21 customers. Longtin HT, p. 298, Ins. 1-10. Mohave responded to service calls of the
22 customers along the Line because Mohave considered them to be its retail electric
23 customers. Longtin HT, p. 299, Ins. 2-4.

24 The customers along the Line were, and still are, Mohave's retail customers.

25 **2. Mohave admitted that the BIA at end of Line was Mohave's retail**
26 **electric customer**

27 At the hearing, Mohave admitted that the BIA was one of its retail customers. A
28 Mohave witness testified:

1 Q: Is it your position that the BIA is a wholesale customer?

2 A: No, they are a retail customer.

3 Q: And they always have been; correct?

4 A: Yes.¹

5 In addition to Mohave admitting that the BIA is a retail electric customer, for years
6 Mohave treated the BIA as a retail customer. Mohave always charged the BIA a
7 commercial retail rate, not a wholesale rate. Gold PF Sr., p. 8, Ins. 7-10. Mohave never
8 treated the BIA as a wholesale customer.

9 In Mohave's own records, Mohave treated the BIA as a retail customer. For
10 instance, in every annual report Mohave filed with the REA, Mohave certified the
11 number and type of its customers, including sale for resale customers. Gold PF Dt., p.
12 14-15 & exh. 9; Gold HT, p. 133, Ins. 15-22. From 1980 through 1997, Mohave
13 indicated it had no sale for resale customers; from 1998 through 2000, Mohave
14 indicated it had one sale for resale customer; in 2001, Mohave again indicated it had no
15 sale for resale customers; and from 2002 through 2007, Mohave once again indicated it
16 had one sale for resale customer. Id. Although Mohave did not offer evidence at the
17 hearing on who was the one sale for resale customer from 1998 through 2000 and from
18 2002 through 2007, Mohave clearly did not consider the BIA to be sale for resale
19 customer from 1980 through 1997 and in 2001. Id. At least for the first 15 years that
20 the Line was operational, Mohave did not classify the BIA as a sale for resale customer
21 or as a utility. Id. Mohave, therefore, considered the BIA to be its retail customer.

22 Finally, the BIA falls under the definition of a retail electric customer. Some of
23 the electricity the BIA sends down to Havasupai Village is used for its own facilities,
24 such as a BIA school, a BIA detention facility, a BIA maintenance building, and BIA
25

26
27
28 ¹ Longtin HT, p. 297, Ins. 21-25.

1 living quarters for teachers and other BIA employees. Walker PF, p. 3, Ins. 13-16;
2 Williams PF, p. 4, Ins. 17-20. The BIA uses this electricity for its "own use" and the BIA
3 therefore was Mohave's retail electric customer in that regard. See A.R.S. §40-201(21).

4 With regard to the electricity that the BIA provides to the tribal members living in
5 Havasupai Village, the BIA's trade or business includes providing support to Native
6 Americans. In this case, the BIA makes electricity available in Havasupai Village in the
7 normal course of its business, which is to support Native Americans, and it allows the
8 Havasupai Village, and Havasupai tribal members, to live in as safe and friendly a
9 community as reasonably possible. Gold PF Dt., p. 20, Ins. 1-9; Williams PF, p. 3, Ins.
10 10-15, p. 4, Ins. 11-16, p. 5, Ins. 4-8. The BIA's supply of electricity to Native Americans
11 in this remote, hot environment falls within the BIA's trade or business of providing
12 support to Native Americans and, therefore, the BIA at Long Mesa was Mohave's retail
13 electric customer. Gold HT, p. 139, In. 21. Mohave has admitted that the BIA at Long
14 Mesa was its retail customer. Longtin HT, p. 297, Ins. 17-25.

15 The ACC correctly found that the customers along the Line and the BIA are
16 Mohave's retail customers. A rehearing on this issue is not warranted.

17 **C. The Contract Did Not Expire and, in any Event, Mohave is Estopped**
18 **from Contending it Expired**

19 Mohave next complains that the Contract expired in 1992. Application, pp. 13-
20 16. The Contract did not expire and, regardless, Mohave is precluded from arguing it
21 expired.

22 Whether or not the Contract expired is irrelevant. The relief sought by the BIA
23 does not require a determination that the Contract was renewed or is still effective.
24 Moreover, although the ACC need not decide whether the Contract was renewed,
25 Mohave is estopped from arguing that the Contract terminated.

26 Mohave repeatedly has contended that the ACC lacks jurisdiction to decide
27 contractual matters or construe contracts. For instance, in its motion to dismiss filed on
28 October 5, 2005, Mohave stated that "... the Commission has no jurisdiction to

1 construe contracts." Motion to Dismiss, p. 12, Ins. 19-20; see also pp. 22-24 (ACC has
2 no jurisdiction to decide contractual disputes). Mohave has further stated that the ACC
3 does not have the jurisdiction to determine whether or not the BIA renewed the
4 Contract. Mohave's Reply to BIA's Opposition to Motion to Dismiss, p. 7, Ins. 12-18.
5 Because Mohave so firmly believes that the ACC lacks jurisdiction to determine whether
6 or not the Contract is still effective, Mohave filed a separate state court action and
7 asked the ACC to stay this action pending a determination from the state court about
8 the Contract's effectiveness. Mohave's Motion to Continue and Hold Proceedings in
9 Abeyance Pending Ruling by Arizona State Court, filed on December 9, 2005. In its
10 state court complaint, Mohave declared that: "The Arizona Corporation Commission
11 lacks jurisdiction to resolve the question of whether the BIA validly exercised an option
12 to renew the Contract" Mohave's Motion to Continue and Hold Proceedings in
13 Abeyance, exh. 1, ¶ 20 (emphasis added); see also Mohave's Notice of Removal, filed
14 on February 10, 2006, p. 1, Ins. 21-22 (ACC is not proper forum to resolve contract
15 disputes).

16 As Mohave has repeatedly and strenuously contended that the ACC lacks
17 jurisdiction to decide whether the Contract expired, Mohave cannot now argue that the
18 ACC should have decided that the Contract expired and that this warrants a rehearing.

19 Although, as just discussed, the ACC need not decide whether the Contract
20 expired, evidence has been presented that indicates the Contract did not terminate.
21 Per the Contract, Mohave billed the BIA a monthly "facilities charge." Longtin HT, p.
22 286, Ins. 16-18. Included in the contractual facilities charge were the cost to construct
23 the Line, taxes, O&M, and depreciation. Longtin HT, p. 286, In. 19 – p. 287, In. 5. The
24 BIA paid Mohave between \$11,000 and \$15,000 per month in facilities charges from
25 April, 1982 through February 1997. Stipulated Facts, ¶ 23. Mohave had the right to
26 charge the BIA for these expenses only because of the Contract. Longtin HT, p. 287,
27 Ins. 8-11. Although Mohave contends the Contract expired in 1992, Mohave continued
28

1 to bill the BIA for the facilities charges until 1997. Longtin HT, p. 287, Ins. 18-21.
2 Mohave, consequently, billed the BIA for contractual facilities charges for five years
3 after the Contract purportedly ended. Longtin HT, p. 288, Ins. 1-4. The BIA paid
4 Mohave somewhere between \$660,000 and \$900,000 in contractual charges after
5 Mohave contends the Contract ended. Mohave cannot reap the benefits of the Contract
6 for five years and now claim the Contract had expired. Mohave, accordingly, cannot
7 contend the Contract expired. 17A Am. Jur. 2d Contracts § 506 (continued
8 performance under terms of contract constitutes exercise of option to renew); 17B
9 C.J.S. Contracts § 500 (continued performance is effective renewal of contract); Freytag
10 v. Crass, 913 S.W.2d 171, 172 (Tenn. App. 1995) (utility contract extended by the
11 action of the parties).

12 When raising its "Contract terminated" defense, Mohave also ignores an
13 important fact. While Mohave focuses entirely upon its Contract with the BIA, Mohave
14 conveniently ignores all the contracts that it entered into with each customer along the
15 Line. Mohave has acknowledged that it entered into contracts with the customers along
16 the Line to provide them with electricity. Longtin HT, pp. 352-55, p. 357, Ins. 10-18; see
17 also Gold HT, p. 109, Ins. 16-17. Even if the BIA-Mohave Contract expired, Mohave's
18 contracts with all customers along the Line never expired. Mohave had no right to
19 abandon the Cesspooch family, the Bravo family, and all the other customers along the
20 Line with whom it had contracts to provide electricity.

21 In sum, whether the BIA-Mohave Contract terminated is immaterial to this
22 proceeding, but in any event, the Contract never terminated. A rehearing is not
23 warranted to determine if the Contract had been renewed or extended.

24 **D. Mohave Can Access the Line and Can Extend the Easements**

25 Mohave next complains that once certain easements expire it will not be able to
26 access the Line. Application, pp. 16-17. As discussed, Mohave has provided service
27 on the Hualapai reservation for more than four decades. Mohave knows how to renew
28

1 tribal easements. The fact that Mohave will need to renew a couple of easements
2 associated with the Line is a ministerial act that does not warrant a rehearing.

3 **E. The Line is a Distribution Line**

4 Mohave also complains that the Line is a transmission line. Application, pp. 17-
5 20. Not so. The Line always has been a distribution line.

6 **1. Pre-construction: Mohave treated the Line as a distribution line**

7 **a. Mohave's REA loan for a distribution line**

8 Mohave financed construction of the Line with a \$1,600,000 loan from the REA.
9 Stipulated Facts, ¶ 14. As part of Mohave's loan application, Mohave completed and
10 submitted to the REA a "Cost Estimates and Loan Budget for Electric Borrowers." Gold
11 PF Dt., exh. 2. Mohave provided cost estimate information based upon the type of
12 facilities it was going to construct. Id. Mohave requested funding to construct a 24.9
13 kV 70.0-mile distribution line. Mohave's cost estimates were solely for distribution-
14 related facilities and services; Mohave estimated the following costs for construction of
15 distribution facilities:
16
17

- 18 • \$1,472,500 for a distribution line tie-in that it called "Supai 14.4/24.9
19 Kv Line" of "70.0" miles;
- 20 • \$12,500 for distribution substations, switching stations, and
21 metering point changes;
- 22 • \$15,000 for miscellaneous distribution equipment; and
- 23 • \$100,000 for distribution engineering services.

24 Id. In its loan application, Mohave certified to the REA that all loan proceeds, the entire
25 \$1,600,000, would be used to construct a distribution line and that nothing would be
26 used for transmission-related facilities. Gold PF Dt., p. 6. The REA approved Mohave's
27 application and funded construction of a distribution line. Id.; see also Gold PF Dt., exh.
28

1 3. Mohave, therefore, was authorized to use the loan funds only to construct a
2 distribution line.

3 **b. Mohave's application to the ACC to approve the REA**
4 **loan: Mohave states it will build a distribution line**

5 Mohave sought ACC approval of its \$1,600,000 REA loan. Gold PF Dt., p. 7.,
6 Ins. 6-19. In Mohave's application to the ACC to get the loan approved, Mohave
7 attached a copy of a cost estimate analysis for the project. Id.; see also Gold PF Dt.,
8 exh. 5. Mohave presented to the ACC estimates for cost of the to-be-built Line if it was
9 for "Distribution Service" or, alternatively, for "Transmission Service" Id. Mohave
10 stated that "For comparison purposes only, an estimated cost of the project, if 69 KV
11 transmission facilities were utilized, is also included herein." Id. Mohave therefore
12 represented that distribution service, not transmission service, was the selected
13 alternative. Id.; Gold HT, p. 131, Ins. 10-12. Mohave estimated the cost for
14 distribution service to be \$1,600,000, which is the loan amount, and \$3,376,000 for 69
15 KV transmission service. Id.; Gold PF Sr., p. 6, Ins. 19-21. Mohave clearly represented
16 to the ACC that it would use the borrowed funds for a distribution line. Gold PF Sr., p.
17 6, Ins. 21-24.

18
19
20
21 In Decision No. 51491, issued on October 22, 1980, the ACC approved
22 Mohave's REA loan and referred to the Line as an "electric line extension," stating:

23 The proceeds from the borrowings will be used for construction purposes
24 of an electric line extension from applicant's certified area across a portion
25 of the Hualapai and Havasupai Indian Reservation located north of Route
26 66 on and adjacent to Supai Road, Coconino County, Arizona. (Emphasis
added.)

27 Gold PF Dt., pp. 7-8; see also Gold PF Dt., exh. 6; Stipulated Facts, ¶20. Because a
28 "line extension" is a line extending an electric distribution system to additional

1 customers (AAC R 14-2-201(22)), the ACC approved funding for construction of a
2 distribution, not transmission, line. Gold PF Dt., pp. 7-8; see also Gold PF Dt., exh. 6.

3
4 **c. The easements were only for a distribution line**

5 As the Line runs along a BIA right-of-way, Mohave needed easements to initially
6 construct and then maintain the Line. Gold PF Dt., p. 6. The Hualapai and Havasupai
7 Tribes passed resolutions to allow the BIA to grant Mohave easements across their
8 respective reservations. Walker PF, p. 2, Ins. 20-21. The BIA granted Mohave 50 foot
9 easements, one for the Hualapai Reservation and another for the Havasupai
10 Reservation, "to be used to construct, install, operate and maintain an electrical
11 distribution line, along with the right to ingress thereto and egress therefrom." Id.; see
12 also Gold PF Dt., exh. 4; Stipulated Facts, ¶ 15. The tribes consented to these
13 easements that ran across their respective reservations. Stipulated Facts, ¶ 15. Per
14 the easements, therefore, Mohave only had the right to build and maintain a distribution
15 line; Mohave did not have the right to construct a transmission line. Gold PF Dt., p. 7;
16 Longtin HT, p. 279, Ins. 8-10.

17
18
19 **d. The Contract for a distribution line**

20 The Contract's service characteristics clearly indicate the Line would be a
21 distribution line. Gold PF Dt., p. 9, Ins. 17-21. The Contract's point of delivery for the
22 BIA is a primary meter on the line side of the Long Mesa transformer. Gold HT, p. 72,
23 Ins. 12-14, p. 80, Ins. 17-20., p. 129, Ins. 16-18; Gold PF Dt., p. 8 & exh. 8. Because
24 the delivery point is a primary meter, and not a substation, the Line was a distribution
25 line. See id.; Gold HT, p. 129, In. 5 – p. 130, In. 7. The service characteristics also
26 include "...three (3) phase, sixty cycles, and shall be delivered at 14.4/24.9 kilovolts..."
27
28

1 and "The electric energy furnished hereunder shall be metered at 24.9 kilovolts." Gold
2 PF Dt., p. 9 & exh. 8. Because 24.9 KV is Mohave's normal distribution voltage level for
3 serving its retail customers (Gold PF Dt., p. 23, Ins. 10-11), the Contract called for a
4 distribution line.
5

6 **e. Mohave's sub-contract to build the Line: the "Supai**
7 **Distribution Line"**

8 Mohave sub-contracted the actual construction of the Line. Longtin HT, p. 326,
9 Ins. 22-24. Mohave called the project the "Supai Distribution Line." Gold PF Sr., p. 7,
10 In. 6 and exh. 4. Mohave's request for bids asked for quotes to construct 60 miles of
11 overhead distribution lines and underground distribution facilities. Longtin HT, p. 330,
12 Ins. 2-7. Mohave's request for bids indicated that no portion of the project would be for
13 transmission. Id. at p. 330, Ins. 9-12. The winning bidder, Four States Electric,
14 indicated in its bid to Mohave that it would construct a distribution line. Id. at p. 332, Ins.
15 8-11. Four States' bid was for \$986,223.47 to build a distribution line and nothing for
16 transmission line construction. Id. at p. 332, In. 21 – p. 333, In. 1. Mohave accepted
17 Four States' bid to build distribution, not transmission, facilities. Id. at p. 333, Ins. 11-21.
18
19

20 **f. Mohave's board of directors approves the sub-contract**
21 **to build a distribution line**

22 Four States' proposed sub-contract was presented to Mohave's board of
23 directors. At the board meeting, Mohave's board approved a sub-contract to construct a
24 distribution line. Longtin HT, p. 334, Ins. 6-9. Mohave's board, therefore, recognized
25 that the Line would be a distribution line.
26
27
28

1 **2. Post-Construction: Mohave treated the Line as a distribution**
2 **line**

3 Once Mohave obtained funding and all necessary approvals and easements, it
4 began (through Four States) to build the Line. Mohave completed construction of the
5 Line in November, 1981 and began delivering electricity through it by the spring of 1982.
6 Stipulated Facts, ¶ 16. After Mohave completed constructing the Line, Mohave
7 continued to treat the Line as a distribution line on its books. Longtin HT, p. 339, Ins.
8 15-18.

9 **a. Mohave's yearly REA filings: Line is a distribution line**

10 As a REA borrower, every year Mohave files with the REA a financial and
11 statistical report. Gold PF Dt., pp. 10-11; Stipulated Facts, ¶ 17. In its annual REA
12 reports, Mohave summarizes its revenues, expenses, outstanding loans, number and
13 type of customers, and miles of transmission and distribution lines. Gold PF Dt., pp.
14 10-11 & exh. 9. For over 20 years, Mohave reported to the REA that the Line was a
15 distribution line.
16
17

18 **b. Mohave's 1989 application for a rate increase: the Line**
19 **is included in Mohave's rate base as a distribution line**

20 A utility must classify all of its lines and equipment by its functionality, either as
21 distribution or as transmission. Gold HT, p. 89, In. 19 – p. 90, In. 5. Mohave always
22 classified the Line as part of its distribution plant. Also, the Line has been, and currently
23 still is, included in Mohave's rate base as a distribution line. Gold ST, p. 4, Ins. 4-6.

24 Mohave admits this. Longtin HT, p. 370, Ins. 7-9.

25 As part of Mohave's 1989 Rate Application, Mohave filed a Cost of Service Study
26 for the year ending July 31, 1989 and a REA Form 7 for year ending December 31,
27
28

1 1988. Stipulated Facts, ¶ 22. In both, Mohave represented to the ACC that the Line is a
2 distribution line. Gold PF Dt., p. 17 & exh 10.

3 As Mohave has not applied for another rate increase and this Cost of Service
4 Study has not been modified or changed, the Line is still classified as a distribution line
5 in the ACC's records. Gold HT, p. 138, ln. 11.
6

7 **3. The actual use and characteristics of the Line indicate it is a**
8 **distribution line**

9 Transmission lines normally run from one high-voltage substation to another
10 high-voltage substation. Gold HT, p. 128, ln. 20 – p. 129, ln. 1. Because the delivery
11 point here is to a primary meter at Long Mesa, the Line does not run from one high-
12 voltage substation to another and therefore is not a transmission line. Gold HT, p. 129,
13 ln. 5 – p. 130, ln. 7. Nor does the BIA step up or step down the power it receives at
14 Long Mesa, which also indicates the Line cannot be a transmission line. Gold HT, p.
15 130, lns. 8-15.
16

17 The only electrical engineer that studied the Line, Leonard Gold, opined that it is
18 a distribution line. Gold PF Dt., p. 2, ln. 9. The following are some of the physical
19 characteristics that indicate the Line is a distribution line:
20

- 21 • The Line is operated at 24.9 kV (Stipulated Facts, ¶ 18), which is
22 Mohave's normal distribution voltage for serving its retail customers. Gold
23 PF Dt., p. 23, lns. 10-11.
- 24 • Throughout Mohave's entire system, Mohave has no other 24.9 kV line
25 that Mohave classifies as a transmission line. Longtin HT, p. 276, lns. 18-
26 21; Gold HT, p. 140, ln. 11; Longtin HT, p. 276, lns. 13-23. Mohave
27 classifies every other one of its 24.9 kV lines as a distribution line. Id.
- 28 • The Line falls within the definition of "electric distribution facilities." Gold
PF Dt., p. 23, ln. 12. "Electric distribution facilities" are defined as "all
property used in connection with the distribution of electricity from an
electric generating plant to retail electric customers except electric

transmission facilities." A.R.S. § 40-201(6). Mohave served retail residential and commercial customers from the Line. Gold PF Dt., p. 23, Ins. 16-17.

- Mohave connected distribution transformers to the Line and then extended the service drops from those transformers to the end user's meter panel to record usage, which is not normally done on transmission lines. Gold PF Dt., p. 23, Ins. 18-21.
- Under industry standards distribution lines deliver electricity to retail customers like those along the Line while transmission lines are used to move large quantities of power at high voltage. Gold PF Dt., p. 23, Ins. 22-25. The Line's voltage, 24.9 kV, is not normally considered high voltage. Gold PF Dt., p. 23, Ins. 24-25.
- The Line does not fall with the definition of a "transmission line" in A.R.S. § 40-360(10). Transmission lines typically carry a far greater load than 24.9kV. Gold PF Dt., p. 24, Ins. 4-8.
- "Electric transmission facilities" are defined to be "all property so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission." A.R.S. § 40-201(11). Neither FERC nor the ACC has classified the Line as a transmission line. Gold PF Dt., p. 24, Ins. 11-12; Longtin HT, p. 326, Ins. 6-11.
- The Line falls within the definition of a "distribution line." Gold PF Dt., p. 24, Ins. 19-20. "Distribution lines" are defined as "utility lines operated at distribution voltage which are constructed along public roadways or other bona fide rights-of-way, including easements on customer's property." AAC R14-2-201(13). The Line's voltage is 24.9kV, the same voltage as Mohave's other distribution lines, and it runs along Indian Route 18. Gold PF Dt., p. 24, Ins. 16-19.
- Mohave installed a recloser, or breaker, along the Line, which is commonly done on distribution lines. See Gold HT, p. 75, Ins. 11-14. Transmission lines typically do not have reclosers in the middle of them. Gold HT, p. 77, Ins. 4-5; Gold HT, p. 128, Ins. 15-18. The recloser that Mohave installed on the Line is an oil circuit recloser ("OCR"). Longtin HT, p. 234, Ins. 13-23. OCRs are used to break up distribution lines. Longtin HT, p. 260, In. 24 – p. 261 In. 1. There are only a couple of customers on either side of the OCR on the Line, which is less than the number of customers Mohave normally has between OCRs on its distribution lines. Longtin HT, p. 260, Ins. 16-23.

- Mohave's point of delivery for the BIA was not to a substation. Longtin HT, p. 270, Ins. 2-11. The BIA's point of delivery was the line side of the Long Mesa transformer where there is a primary meter. Longtin HT, pp. 262-63, 270; Gold HT, p. 72, Ins. 12-14, p. 80, Ins. 17-20, p. 129, Ins. 16-18.

All of these physical characteristics indicate the Line is a distribution line and that it is simply a line extension from Mohave's Nelson Substation, as the ACC described the Line when it approved Mohave's REA loan. Gold PF Dt., p. 24, Ins. 21-22; see ACC R 14-2-201(22) ("Line extension" is the "lines and equipment necessary to extend the electric distribution system of the utility to provide service to additional customers.") The Line extended Mohave's electric distribution system from its Nelson Substation to Long Mesa in order to provide service to additional customers. Gold PF Dt., p. 24, Ins. 25-27. The Line, therefore, is a distribution line.

In sum, the Line has all the characteristics of a distribution line, which is how Mohave classified it for 25 years. A rehearing on this issue is not warranted.

F. Mohave Violated A.R.S. § 40-285 When it Abandoned the Line without Required ACC Approval

Mohave argues that it effectively abandoned the Line. Application, pp. 20-24. Mohave not only violated ACC laws and regulations concerning disposing of assets, but its quit claim of the Line was null and void as a matter of law.

1. The quit claim is void because the BIA never accepted it

A deed must be accepted to vest legal title in the grantee. Morelos v. Morelos, 129 Ariz. 354, 631 P.2d 136 (Ct. App. 1981); Robinson v. Herring, 75 Ariz. 166, 253 P.2d 347 (1953). Here, the BIA never accepted Mohave's quit claim, so it never transferred title in the Line. See id. Mohave still owns the Line as a matter of law.

On or about August 7, 2003, Mohave's counsel wrote the BIA and the two tribes, enclosed a copy of the quit claim, identified the twelve accounts along the Line, and told

1 them the "accounts and facilities are now owned by your entities." Stipulated Facts, ¶
2 37. In response, the BIA wrote Mohave and stated that the quit claim was not valid until
3 accepted, that Mohave could not abandon the Line without ACC approval, and that
4 Mohave still owned the Line. Williams PF, p. 11, Ins. 15-19 and exh. 7 and 8; Stipulated
5 Facts, ¶ 38. Ten days later, the BIA again wrote Mohave, this time stating that the BIA
6 did not accept the quit claim, that the quit claim was void and of no effect, that the BIA
7 was to receive power at Long Mesa rather than the Nelson Substation, and that Mohave
8 had to maintain and operate the Line. Stipulated Facts, ¶ 39.

9 Because the BIA never accepted the quit claim, it is void and Mohave still owns
10 the Line. See Morelos, 631 P.2d at 138; Roosevelt Savings Bank, 556 P.2d at 825;
11 Robinson, 253 P.2d at 349-50.

12 **2. The quit claim also is void because deeds cannot be used to**
13 **transfer an electric line**

14 The quit claim is void as a matter of law for another reason. Deeds only convey
15 interests in real property. Black's Law Dictionary (8th ed. 2004). Through the quit
16 claim, Mohave attempted to convey the Line itself, which consists of poles, wiring,
17 transformers, meters, etc. These are personal property, not real property. Mohave,
18 therefore, did not, and could not, transfer title in the Line by the quit claim. Mohave still
19 owns the Line.

20 **3. Because Mohave's quit claim violated A.R.S. § 40-285, it is**
21 **void. Mohave still owns the line**

22 Absent ACC approval, a public service corporation cannot dispose any part of its
23 line, plant or system that is "necessary or useful in the performance of its duties to the
24 public." A.R.S. § 40-285(A). Any such disposition is void. Id. Mohave did not obtain
25 ACC approval before it quitclaimed the Line to the tribes and the BIA. Gold PF Dt., p.
26 27, Ins. 20-23.

1 This whole dispute likely would not have occurred if Mohave simply followed
2 proper procedures and laws. A prudent utility would have filed an application with the
3 ACC before disposing an electric line that serves its customers. Mohave, on the other
4 hand, decided to abandon the Line without obtaining the necessary ACC approval.
5 There is no need for the ACC to even debate whether the Line currently is "necessary
6 or useful." That would have been properly addressed if Mohave had filed the required
7 application with the ACC and obtained the necessary order from the ACC before
8 Mohave quitclaimed the Line. Mohave never obtained ACC approval, and therefore the
9 quit claim is void. A.R.S. § 40-285(A).

10 **a. The Line is used and useful**

11 As mentioned, Mohave should have followed proper required procedures and
12 applied to the ACC for an order authorizing it to abandon the Line. Had Mohave done
13 so, the ACC would have denied Mohave's application because the Line is used and
14 useful.

15 **i. The Line is used and useful to the customers**
16 **along the Line**

17 There can be little doubt that the Line benefited Mohave's customers and the
18 public. It is undisputed that the Cesspooch and Bravo families have used electricity
19 from the Line to heat their homes, to cook their food, and to light their rooms. The
20 Hualapai Tribe, TDS telephone company, the BIA, and the Navajo Nation also have
21 used, and continue to use, electricity from the Line for their respective purposes. The
22 Line's benefit to the public always has been recognized. Indeed, when the ACC
23 approved Mohave's application to borrow \$1,600,000 to build the Line, the ACC stated
24 that the loan was "in the public interest." Stipulated Facts, ¶ 20. Ever since the Line
25 began providing electricity, it has been used and useful. It still is today.

26 Although Mohave claims the Line is not used or useful, Mohave admitted at the
27 hearing that Mr. Bravo would consider the Line to be used and useful. Longtin HT, p.
28

1 293, Ins. 4-10. The Line is used and useful because Mr. Bravo uses electricity supplied
2 through it. Longtin HT, p. 293, Ins. 22-25. Indeed, Mohave admits that all the
3 customers along the Line would consider the Line to be used and useful. Longtin HT, p.
4 365, Ins. 3-6. Those customers currently receive their electricity from the Line and have
5 done so for about 25 years, so the Line was and is used and the Line was and is useful
6 to them. Gold PF Dt., p. 27 Ins. 9-12.

7 **ii. As the Line is in Mohave's rate base, both Mohave**
8 **and the ACC have recognized that the Line is**
9 **used and useful**

10 In its 1989 Rate Application, Mohave considered the Line used and useful. Gold
11 PF Sr., p. 3. Mohave included a Cost of Service Study in its application. Id. Mohave's
12 rate base included the Line. Id. Rate base typically means the value of property used
13 by a utility in providing service and upon which a utility is allowed to earn a specified
14 rate of return. Id. Rate base is intended to reflect the investment made by the utility in
15 all property and plant that both the utility and Commission consider to be used and
16 useful in providing electric service. Id. As Mohave included the Line in its rate base,
17 Mohave itself deemed the Line to be used and useful to its customers. Id.

18
19
20 The ACC also deemed the Line to be used and useful when it approved
21 Mohave's rate base that included the Line. Gold PF Sr., p. 5. Mohave has not filed
22 another rate application since its 1989 Rate Application and has never adjusted its rate
23 base or removed the Line from its rate base. Id. The Line, therefore, is still included in
24 Mohave's rate base and, therefore, is still considered used and useful to Mohave's
25 customers.

1 As there are no other readily available sources of electricity, the Line is not only
2 used and useful to the customers along the Line, but it is an absolute necessity if the
3 customers along the Line hope to continue to receive electricity. The Line is used and
4 useful and, accordingly, Mohave should not be allowed to abandon it (even if Mohave
5 had filed the required application with the ACC).
6

7
8 Mohave's quit claim of the Line is void because, first, it did not comply with laws
9 governing deeds, second, Mohave never applied for an order authorizing the quit claim,
10 and, third, the Line is used and useful in any event. Mohave still owns the Line and no
11 rehearing is warranted.
12

13 **G. The ACC has Jurisdiction and Tribal Sovereignty is Irrelevant**

14 Mohave argues the ACC does not have jurisdiction and that the doctrine of tribal
15 sovereignty somehow precludes the ACC from regulating Mohave in the instant matter.
16 Application, pp. 25-29. As the ACC has the jurisdiction (and indeed the duty) to oversee
17 and regulate public service corporations like Mohave, Mohave's jurisdictional defense is
18 not a basis to rehear this matter.
19

20 **1. Tribal sovereignty is irrelevant**

21 Mohave contends that the ACC should refuse to decide this case because of
22 tribal sovereignty. Tribal authority, however, is a defense that is raised by the tribes
23 themselves. Arizona v. Zaman, 190 Ariz. 208, 946 P.2d 459 (1997) (non-Indians cannot
24 raise tribal interests or sovereignty to escape their legal obligations); Smith Plumbing v.
25 Aetna Cas. & Surety Co., 149 Ariz. 524, 720 P.2d 499 (1986) (only tribes can raise
26 defense). Mohave does not have the right to assert tribal sovereignty. As Mohave has
27 no standing to assert tribal sovereignty, it is irrelevant to the present matter and not a
28 basis for rehearing.

1 **2. The ACC is the proper forum to decide this dispute and has**
2 **jurisdiction**

3 Mohave is a public service corporation that is regulated by the ACC. Stipulated
4 Facts, ¶ 1. As such, the ACC has full power to regulate and oversee Mohave. Ariz.
5 Const. Art 15, § 3; see also A.R.S. § 40-202(A) (ACC regulates all PSCs and may do
6 anything, whether or not in ARS, to supervise and regulate them); A.R.S. § 40-321 (the
7 ACC is authorized to determine whether a PSC is acting justly or reasonably and to
8 enforce its determination by order or regulation); A.R.S. § 40-285(A); A.A.C. R14-2-
9 202(B). Mohave is subject to ACC regulation and jurisdiction.

10 Although the ACC may not have jurisdiction to decide tort or contract claims, the
11 ACC has the exclusive and plenary authority to determine whether or not the services
12 provided by a public service corporation are just and reasonable. Qwest Corp. v. Kelly,
13 204 Ariz. 25, 30, 59 P.3d 789, 794 (Ct. App. 2002) (citing Tucson Elec. Power Co. v.
14 Arizona Corp. Comm'n, 132 Ariz. 250, 645 P.2d 231 (1982)). Mohave, therefore, is
15 subject to ACC jurisdiction.
16

17 Not only do Arizona statutes and regulations confer jurisdiction upon the ACC to
18 resolve the present dispute, but Mohave also contractually agreed to ACC jurisdiction.
19 At least three provisions of the Contract state that the ACC has jurisdiction. See Gold
20 PF Dt., exh. 8 at Technical Provisions, ¶ 3; at Technical Provisions, clause "9.
21 Disputes;" and at Addendum No. 1, p. 10. Given that Mohave expressly agreed that the
22 ACC would have jurisdiction over this dispute, Mohave cannot now request a rehearing
23 because of a lack of jurisdiction.
24
25
26
27
28

1 **H. The BIA does not Owe the Tribes a Fiduciary Duty to Provide Electricity**
2 **to Them. Even if the BIA does Owe the Tribes Some Duty, it Does Not**
3 **Abrogate Mohave's Obligations to its Customers**

4 Mohave next complains that the BIA owes tribes a fiduciary duty and that this
5 somehow allows Mohave to ignore its regulatory obligations. Application, pp. 29-31. In
6 reality, the BIA does not owe the Hualapai or Havasupai tribes a fiduciary duty to
7 provide them with electricity. The BIA, U.S. Department of Interior, is an executive
8 agency of the United States. Stipulated Facts, ¶ 2. Under 25 U.S.C. § 13, the BIA is
9 authorized to provide support for the general welfare and civilization of Native
10 Americans, including the Havasupai and Hualapai Tribes. Stipulated Facts, ¶ 3. As
11 part of this authorization, the BIA coordinated the construction of Line to Long Mesa.
12 Mohave's predicate, that the BIA has a fiduciary duty, fails and therefore a rehearing on
13 this issue is not warranted.

14 Moreover, even if the BIA has a fiduciary duty, Mohave is still obligated to comply
15 with Arizona laws and regulations, which it failed to do here. The BIA's supposed
16 fiduciary duty is simply a red herring that has no relevance to the obligations Mohave
17 owes to its customers.

18 **I. It is Fair and Just that Mohave Treat the BIA and the Tribes Just Like its**
19 **Other Customers**

20 Mohave finally argues that it is not fair that it be ordered to own the Line as it will
21 burden its other customers. Application, pp. 31-32. That argument fails for at least two
22 reasons.

23 First, if a utility is not recovering its costs serving a particular customer class that
24 utility ought to apply to the ACC for a rate increase. A utility cannot simply walk away
25 from customers because it is not earning enough money from them. Yet Mohave did
26 just that here; Mohave walked away from its customers instead of asking the ACC for a
27 rate increase.
28

1 Second, Mohave's insinuation that it was losing money is incorrect. Mohave
2 applied to the ACC for a permanent rate increase, Docket No 0-1750-89-231, on
3 September 26, 1989 (the "1989 Rate Application). Gold PF Dt., p. 16. Mohave's Cost
4 of Service Study attached to its 1989 Rate Application indicates that Mohave was
5 earning a positive rate of return on the BIA account and that the BIA "was paying its
6 weight." Gold HT, p. 140, In. 22 – p. 141, In. 5. Mohave was not losing money serving
7 customers along the Line. Gold PF Sr., p. 10. Mohave's Cost of Service summary
8 shows the BIA providing a 5.98% return on the rate base and an Operating TIER of
9 1.24, which indicates Mohave was providing service without a loss. Id. Also, the BIA
10 has paid off construction of the Line, every month it was paying for operation and
11 management costs and for depreciation of the Line, and as part of the ACC approved
12 retail rate for the BIA, the BIA has paid a monthly service charge, demand charge and
13 energy charge to Mohave. Id. As a result, Mohave was recovering its costs associated
14 with the Line. Id.

15
16
17
18 Mohave has admitted that the Line did not financially harm Mohave's customers
19 in general. In response to the BIA's motion for summary judgment, Mohave stated:

20
21 By specifically allocating plant and the associated revenues and expenses, and
22 utilizing the low cost loan as a reason to hold rates steady, Mohave was following
23 the Commission's directive in Decision No. 53174... to treat the 70-mile
transmission line separately so as not to burden Mohave ratepayers with costs
associated with [the Line]. (Emphasis added.)

24 Mohave's Statement of Disputed Facts and Additional Material in Support of Response
25 to BIA's Motion for Partial Summary Judgment, ¶ 8, pp. 4-5. Mohave's own admission,
26 therefore, refutes its argument that the Line burdens its other customers or that those
27 other ratepayers subsidize the Line.
28

1 The BIA always has paid its fair share, including a reasonable rate of return, and
2 is still willing to pay its fair share. If Mohave believes it is not earning a sufficient return,
3 then it simply needs to file a rate application.
4

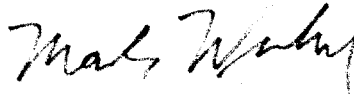
5 Mohave's claim that the Line is burdening its other customers is not correct and it
6 is not grounds for a rehearing.

7 **III. CONCLUSION**

8 As a licensed utility, Mohave is obligated to comply with all ACC rules,
9 regulations, and orders. Although the Line had been used by Mohave's customers for
10 years, Mohave simply abandoned it and walked away from its customers. Decision No.
11 72043 rectified Mohave's mistakes. Mohave's application for rehearing should be
12 denied.

13 Respectfully submitted this 11 day of January, 2011.

14 DENNIS K. BURKE
15 United States Attorney
16 District of Arizona

17 

18 MARK J. WENKER
19 Assistant U.S. Attorney
20 Attorneys for the Bureau of Indian Affairs
21

22 Original and 13 copies filed
23 this 11th day of January, 2011, with:

24 Docket Control Division
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, Arizona 85007

28 Copies delivered this
29 11th day of January, 2011, to:

30 Janice Alward
31 Legal Division
32 Arizona Corporation Commission
33 1200 West Washington Street
34 Phoenix, Arizona 85007

1 Hearing Division
2 Arizona Corporation Division
1200 West Washington Street
Phoenix, Arizona 85007

3 Steven A. Hirsch
4 Rodney Ott
Bryan Cave
Two N. Central Ave., Suite 2200
Phoenix, AZ 85004-4406

5
6 *R. Leharo 1/11/11*
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28